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4 REO CAPITAL FUND 4, LLC,  
5 Plaintiff,  
6 v.  
7 ALESHIA FULLER,  
8 Defendant.  
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10 Case No. 15-cv-03252-JST  
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**12 ORDER GRANTING MOTION FOR DE  
13 NOVO DETERMINATION AND  
14 REMANDING ACTION**

15 Re: ECF No. 10  
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18 Before the Court is a Report and Recommendation prepared by Magistrate Judge Kandis  
19 A. Westmore. ECF No. 7. Judge Westmore recommends that the Court remand the present action  
20 to state court, as federal subject matter jurisdiction is lacking. Id. Defendant asks this Court to  
21 conduct a de novo determination of the question of federal subject matter jurisdiction pursuant to  
22 Local Rule 72-3 and Federal Rule of Civil Procedure 72(b). ECF No. 10. The Court will grant  
23 the motion for de novo determination and remand the action to Contra Costa County Superior  
24 Court for lack of subject matter jurisdiction.

**25 I. BACKGROUND**

26 Plaintiff REO Capital Fund 4, LLC brought the current action in Contra Costa County  
27 Superior Court on July 7, 2015. ECF No. 1 at 4. The complaint alleges a cause of action for  
28 unlawful detainer. Id. Plaintiff requests restitution of possession of property, damages of \$66.66  
per day from July 1, 2015 until rendition of Judgment in the present action, and statutory damages  
of \$600. Id. at 6.

Defendant filed a notice of removal on July 13, 2015. Id. at 1-2. Defendant states that  
federal subject matter jurisdiction exists pursuant to “28 U.S.C. § 1331 (federal question); 15  
U.S.C. §1601, et. seq. (TILA); 15 U.S.C. §1692, Fair Debt Collection Practices Act; 12 U.S.C.

1 §2601 (RESPA); 28 U.S.C §1367 (Supplemental Jurisdiction) and the Home Ownership and  
2 Equity Protection Act ('HOEPA') 12 U.S.C. §1461 et seq." Id. at 2.

3 Following removal, the case was assigned to Judge Westmore. Defendant consented to  
4 magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). ECF No. 5. Plaintiff, however, did  
5 not file a notice of consent or declination to magistrate judge jurisdiction. Judge Westmore issued  
6 a report and recommendation advising that the action "should be remanded to state court, as  
7 removal is obviously improper." ECF No. 7. Noting that Plaintiff had not consented to magistrate  
8 judge jurisdiction, the order directed the case to be reassigned to a District Judge. Id.

## 9 **II. MOTION FOR DE NOVO DETERMINATION**

10 Pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72(b), and Civil Local  
11 Rule 72-3, a party may object to a magistrate judge's proposed findings and recommendations by  
12 filing a motion for a de novo determination of a dispositive matter referred to a magistrate  
13 judge. Such a motion must be filed within fourteen days of the magistrate's recommendation and  
14 must specifically identify the portions of the findings and recommendations to which the party  
15 objects, and the reasons for the objection(s). 28 U.S.C. § 636; Fed. R. Civ. Pro. 72(b); Civ. L.R.  
16 72-3. When a party properly requests a de novo determination under these rules, the Court must  
17 determine de novo any part of the magistrate judge's disposition that the party has objected to. Id.  
18 The Court "may accept, reject, or modify the recommended disposition, receive further evidence;  
19 or return the matter to the magistrate judge with instructions." See id.

20 Defendant filed the present motion for de novo determination within fourteen days of  
21 Judge Westmore's July 27, 2015 Report and Recommendation. Defendant has identified the  
22 particular finding to which she objects: Judge Westmore's conclusion that federal subject matter  
23 jurisdiction is lacking. Because Defendant has satisfied the requirements of 28 U.S.C. § 636,  
24 Federal Rule of Civil Procedure 72(b), and Civil Local Rule 72-3, the Court hereby grants  
25 Defendant's Motion for a De Novo Determination of Judge Westmore's recommendation that this  
26 action be remanded to state court.

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**1        III. FEDERAL SUBJECT MATTER JURISDICTION****2        A. Legal Standard**

3                “Except as otherwise expressly provided by Act of Congress, any civil action brought in a  
4        State court of which the district courts of the United States have original jurisdiction, may be  
5        removed by the defendant . . . to the district court . . . for the district and division embracing the  
6        place where such action is pending.” 28 U.S.C. § 1441(a). The party seeking to remove the action  
7        must file a notice of removal within thirty days of the party’s receipt of service of the initial  
8        complaint or the summons. 28 U.S.C. § 1446(b)(1). A party seeking to remove an action also  
9        bears the burden of establishing that removal is proper. Gaus v. Miles, Inc., 980 F.2d 564, 566  
10      (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as to the right of  
11      removal in the first instance.” Id. (citations omitted).

12                Federal courts may only hear actions over which they possess subject-matter jurisdiction.  
13      See Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 975 (9th Cir. 2012).  
14      Generally, the existence of jurisdiction may be premised on either diversity of the parties or a  
15      federal question. See Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183 & n.2 (9th Cir.  
16      2002). Federal district courts have federal question jurisdiction over “all civil actions arising  
17      under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331.

18                Federal question jurisdiction is limited by the well-pleaded complaint rule, which requires  
19      that the basis for federal jurisdiction appear on the face of the properly pleaded complaint, either  
20      because the complaint directly raises an issue of federal law, or because the plaintiff’s “right to  
21      relief under state law requires resolution of a substantial question of federal law in dispute  
22      between the parties.” Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.,  
23      463 U.S. 1, 13 (1983). “[A] case may *not* be removed to federal court on the basis of a federal  
24      defense . . . , even if the defense is anticipated in the plaintiff’s complaint . . . .” Caterpillar Inc. v.  
25      Williams, 482 U.S. 386, 393 (1987) (citation omitted). Federal question jurisdiction may also be  
26      proper when the plaintiff’s “right to relief under state law requires resolution of a substantial  
27      question of federal law in dispute between the parties.” Franchise Tax Bd., 463 U.S. at 13.

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1                   **B.        Analysis**

2                   Defendant's notice of removal states that the Court has federal question jurisdiction under  
3                   28 U.S.C. Section 1331. Plaintiff has pled a single claim for unlawful detainer, which arises under  
4                   California law, and does not present a substantial question of federal law. Defendant's notice of  
5                   removal identifies several federal statutes. ECF No. 1 at 2. As Judge Westmore noted, however,  
6                   these statutes do not provide a basis for the exercise of federal subject matter jurisdiction over this  
7                   action, as they do not appear on the face of the complaint.

8                   Defendant's motion for de novo determination states that "[t]he Action should not be  
9                   remanded because multiple violations of federal law occurred in the bringing of the Action." ECF  
10                  No. 10 at 3. Specifically, Defendant contends that Plaintiff acquired possession of the disputed  
11                  property in violation of federal law. Again, "the presence or absence of federal-question  
12                  jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal  
13                  jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly  
14                  pleaded complaint." Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475 (1998) (quotations  
15                  and citation omitted). Plaintiff's alleged violations of federal law do not appear on the face of the  
16                  Plaintiff's "properly pleaded complaint." Even if Defendant intends to argue that Plaintiff is not  
17                  in valid possession of the property under federal law as a defense to the unlawful detainer action,  
18                  "a case may not be removed to federal court on the basis of a federal defense." Id.

19                  Because the complaint in this action contains no cognizable basis for federal subject matter  
20                  jurisdiction, the Court will remand the action to state court.

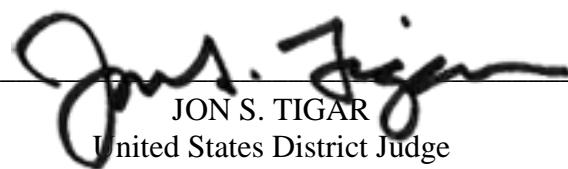
21                   **CONCLUSION**

22                  Upon a de novo determination of the question of federal subject matter jurisdiction, the  
23                  Court finds no basis for federal jurisdiction exists in this action. This action is hereby remanded to  
24                  the Contra Costa County Superior Court.

25                  IT IS SO ORDERED.

26                  Dated: August 19, 2015

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JON S. TIGAR  
United States District Judge